

REMARKS/ARGUMENTS

This Amendment responds to the issues raised in the Official Action of November 16, 2009, a Final Rejection, and accompanies a Request for Continued Examination. The following remarks will serve to summarize the substance of the interview held on January 21, 2010 as required by MPEP §713.04.

The claims have been amended in order to more particularly point out and distinctly claim that which applicants regard as their invention as well as address the issues raised in the Official Action noted above.

In more detail, claims 1 and 2 have been amended to specify that the food contains at least 25% w/w less fat per fixed amount of food than the corresponding full fat food. The definition of “full fat food” is contained in the regulations of the Food & Drug Administration and is now incorporated into both claims 1 and 2.

Basis for the amendments can be found on page 3, line 30-page 4, line 5, on page 4, lines 8-14, and on page 4, lines 25-32.

In amended claims 1 and 2 a corresponding full-fat food is defined as an appropriate reference food as defined in the Code of Federal Regulations, Title 21, section 101.13 (j)(1)(i)(B), and 101.13(j)(1)(ii)(A)(B), issued by the US Food and Drug Administration.

The Code of Federal Regulations, issued by the FDA is a set of regulations which is known to each and every food producer in the US, and to which these producers must adhere.

According to CFR 101.13 (j)(1)(i)(B) and 101.13(j)(1)(ii)(A)(B), “*the nutrient value for the reference food shall be a representative of a broad base of foods of that type, e.g. a value in a representative, valid data base*”.

Applicant submits the USDA National Nutrient Database for Standard Reference, Release 22 (<http://www.ars.usda.gov/SP2UserFiles/Place/12354500/Data/SR22/nutrlst/sr22a204.pdf>). This database is the major source of food composition data in the United States and as such constitutes a representative, valid database as referred to in CFR 101.13 (j)(1)(i)(B) and 101.13(j)(1)(ii)(A)(B).

By way of example, applicant refers to margarine as a reference food. In the USDA National Nutrient Database for Standard Reference, Release 22, under NBD No. 04611, margarine is listed as containing $11.38/14.2 = 80\%$ w/w fat.

Using the claim language of claims 1 and 2, and taking the USDA National Nutrient Database for Standard Reference as a representative -- a valid database as referred to in CFR 101.13 (j)(1)(i)(B) and 101.13(j)(1)(ii)(A)(B) -- the base line amount of fat of margarine as a full-fat food is well defined.

Claims 1 and 7-10 as they previously stood were rejected as being anticipated by Potman US 5,288,509. Applicants traverse this rejection taking into account the amendments made to claims 1 and 2 above.

As mentioned during the course of the interview on January 21, 2010, the examiner noted that margarine is listed in the description of this patent as “*an exemplary food with a reduced amount of fat derived from fat or oil-rich food*”. Applicant submits that this is an incorrect/incomplete citation of the description.

On page 9, lines 3-6 of the description Potman explains that “*the invention finds very suitable application (...) in food with a reduced amount of fat which is derived from fat or oil-rich products*”. An example of such a food (i.e. a food with a reduced amount of fat which is derived from fat or oil-rich products) is “*margarine with a reduced amount of fat*” (page 9, line 10).

It is important to note that the description does **not** claim that margarine is a food with reduced amount of fat, but instead that “margarine with a reduced amount of fat” is a suitable application.

“Margarine with a reduced amount of fat” is not the same food as “margarine”:

- “Margarine” is listed as a reference food in USDA National Nutrient Database for Standard Reference, Release 22, under NBD No. 04611 (see discussion above). Margarine is therefore a full-fat food according to the terms of the present invention. The fat content of margarine is 80% w/w.
- “Margarine with a reduced amount of fat” is a simply margarine containing less fat than margarine, i.e. less than 80% w/w fat.

Claim 1 relates to a method to enhance the specific fat note in the mouthfeel of a food containing at least 25% w/w less fat per fixed amount of food than the corresponding full-fat food, which corresponding full-fat food is defined as an appropriate reference food as defined in 21 CFR 101.13 (j)(1)(i)(B) and 101.13(j)(1)(ii)(A)(B), by addition to this food of a yeast extract

comprising free amino acids and at least 8% w/w of 5'-ribonucleotides making it more similar to the mouthfeel of the corresponding full-fat food by not providing any taste or specific note of the yeast extract itself.

As indicated above, "margarine" is a "corresponding full-fat food" (containing 80% w/w fat). Following the definition of claims 1 and 2, margarine containing 60% w/w or less fat corresponds to "*margarine with a reduced amount of fat*" (25% (i.e. 1/4) of 80% w/w equals to 20% w/w; at least 25% less equals to 80% w/w minus 20% w/w or less = 60% w/w or less).

Thus, in the specific example of margarine, the invention would relate to a method to enhance the specific fat note in the mouthfeel of **margarine containing 60% w/w or less of fat** by addition to said food of a yeast extract comprising free amino acids and at least 8% w/w of 5'-ribonucleotides making it more similar to the mouthfeel of **margarine (i.e. having 80% w/w fat)** by not providing any taste or specific note of the yeast extract itself.

For these reasons it is respectfully submitted that claims 1 and 2 define subject matter that is both novel and inventive over the disclosures of this document. Reconsideration and withdrawal of the related rejections is solicited.


The Official Action also contains various rejections of either alleged anticipation or obviousness based upon the published international application WO 03/063614. Applicants address this rejection by submitting a joint declaration of inventors Kortes and Noordam specifically pointing out that to the extent that the cited document includes subject matter related to the subject application, the invention(s) defined in the present application is the joint invention of inventors Kortes and Noordam and therefore this published document is not available as prior art against the claims of the present application.

This declaration, in draft form, was discussed during the interview and the examiner duly noted that the then proposed declaration demonstrates the two inventors of the subject application were the sole inventors of the subject matter of the present invention and that accordingly this declaration appears to overcome the rejections based upon the document cited. Applicants have now perfected their position and therefore request that all rejections based upon the WO citation be withdrawn.

KORTES et al
Appl. No. 10/563,320
March 9, 2010

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 

Arthur R. Crawford
Reg. No. 25,327

ARC:eaw
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100